

Readopt with amendment Env-A 3200, eff. 11-2-07 (doc. #9022), cited and to read as follows:

CHAPTER Env-A 3200 NOx BUDGET TRADING PROGRAM

Statutory Authority: RSA 125-J:12, I

PART Env-A 3201 PURPOSE

Env-A 3201.01 Purpose. The purpose of this chapter is to implement the NOx Budget Program established by RSA 125-J:132 ~~and RSA 125-J:2-a~~, which requires reductions in ozone season NOx emissions from NOx budget sources, as defined in RSA 125-J:1, XIX-b, in order to further the effort to achieve the national ambient air quality standards (NAAQS) for ozone.

PART Env-A 3202 APPLICABILITY

Env-A 3202.01 General Applicability. This chapter shall apply to the owner or operator of a NOx budget source.

PART Env-A 3203 DEFINITIONS

Env-A 3203.01 “Account number” means the identification number given by the administrator of the NOx allowance tracking system (NATS), as defined in Env-A 3203.39, to an account in which allowances are held in the NOx allowance tracking system.

Env-A 3203.02 “Account” means the place in the NOx allowance tracking system where allowances are recorded, either:

- (a) A compliance account, where allowances are held by a budget source;
- (b) An overdraft account, where allowances are held by a group of budget sources; or
- (c) A general account, where allowances are held by any person.

Env-A 3203.03 “Acquiring account” means the party in an allowance transfer who obtains allowances through purchase, trade, auction or gift.

Env-A 3203.04 “Affected facilities” means fossil fuel-fired boilers or indirect heat exchangers with a maximum rated heat input capacity of 250 MMBtu/Hour or more which operated at any time in calendar year 1990.

Env-A 3203.05 “Allocate” means the initial assignment of allowances to a budget source through this regulation, and recorded by the administrator to a NOx allowance tracking system account. The term includes “allocation.”

Env-A 3203.06 “Allocation period” means any one of 3 time periods to which allowances are allocated including the period 1999 through 2002, the period 2003 through 2005 and the period 2006 and beyond.

Env-A 3203.07 “Allowance” means ***“NOx budget allowance” as defined in RSA 125-J:1, XIX-a, as reprinted in Appendix B.*** ~~the limited authorization to emit one ton of NOx during a specified control period, or any control period thereafter subject to the terms and conditions for banked allowances pursuant to the provisions of this chapter.~~

Env-A 3203.08 “Allowance deduction” means the withdrawal of allowances by the administrator for permanent retirement from a NOx allowance tracking system account.

Env-A 3203.09 “Allowance transfer” means the conveyance of one or more allowances from one account to another by whatever means, including but not limited to purchase, trade, auction, or gift in

accordance with the procedures established in this chapter, effected by the submission of an allowance transfer request to the NATS administrator.

Env-A 3203.10 “Allowance transfer deadline” means 12:01 a.m. on December 1 and is the deadline for recording allowances in a budget source’s compliance or overdraft account for purposes of meeting the requirements of this regulation for the preceding control period.

Env-A 3203.11 “Alternative monitoring system” means a system or component of a system, designed to provide direct or indirect data of mass emissions per time period, pollutant concentrations, or volumetric flow, as provided for in this chapter

Env-A 3203.12 “Authorized Account Representative (AAR)” means the responsible person who is authorized, in writing, to transfer and otherwise manage allowances as well as certify reports to the NATS and the NOx emissions tracking system (NETS), as defined in Env-A 3203.40.

Env-A 3203.13 “Banked allowance” means an allowance that is not used to reconcile emissions in the designated year of allocation but which is carried forward into the next year and flagged in the account as banked.

Env-A 3203.14 “Banking” means the retention of unused allowances from one control period for use in a future control period.

Env-A 3203.15 “Baseline” means the NOx emission inventory approved by the ozone transport commission (OTC) as the official 1990 baseline emissions of May 1 through September 30 for purposes of the NOx budget program.

Env-A 3203.16 “Budget” means the number, in tons per season, of NOx emissions which results from the application of the emission reduction requirement of the OTC MOU dated September 27, 1994, and which is the maximum amount of NOx emissions which may be released from the budget sources collectively during a given control period. The term includes “emission budget.”

Env-A 3203.17 “Budget source” means “NOx budget source” as defined in RSA 125-J:1, XIX-b, ***as reprinted in Appendix B.*** ~~namely “a fossil fuel fired boiler or indirect heat exchanger with a maximum rated heat input capacity of 250 MMBtu/Hour, or more; and all electric generating devices with a rated output of 15 MW or more.”~~

Env-A 3203.18 “Compliance account” means the account for each budget source in the NOx allowance tracking system, in which are held current and future year allowances useable for a specific designated control period as indicated by their unique serial number.

Env-A 3203.19 “Control period” means the period beginning May 1 of each year and ending on September 30 of the same year, inclusive.

Env-A 3203.20 “Current year” means the calendar year in which the action takes place or for which an allocation is designated.

Env-A 3203.21 “Early reduction allowance” means NOx emission reductions achieved during the control period of 1998 and certified by the department pursuant to special temporary rules adopted by the commissioner in accordance with RSA 125-J:12.I.

Env-A 3203.22 “Electric generating device” means any fossil fuel-fired combustion device of 15 MW capacity or greater which provides electricity for sale or use.

Env-A 3203.23 “Electric output” means the electric generation, in MWh, from an electric generating device.

Env-A 3203.24 “End-use efficiency projects” means those power conservation projects ~~which~~ ***that***:

- (a) Are implemented by, or on behalf of, a consumer of electric power in New Hampshire;
- (b) Reduce consumers' consumption of power;
- (c) Were installed after May 1, 1999;
- (d) Are in operation in the control period for which allowances from the energy efficiency and renewable energy set-aside under Env-A 3207.12 are claimed; and
- (e) Correspond to no less than one ton of utility NOx emissions reductions either individually or when aggregated with other similar projects.

Env-A 3203.25 "Excess emissions" means emissions of nitrogen oxides reported by a budget source during the control period, rounded to the nearest whole ton, which are greater than the equivalent number of allowances allocated to, or which are available in, the budget source NOx allowance tracking system compliance or overdraft account by the allowance transfer deadline for that season.

Env-A 3203.26 "Fossil fuel" means natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived wholly, or in part, from such material.

Env-A 3203.27 "Fossil fuel-fired" means the combustion of fossil fuel or any derivative of fossil fuel alone, or, if in combination with any other fuel, fossil fuel comprises 51% or greater of the annual heat input on a BTU basis.

Env-A 3203.28 "General account" means an account in the NATS that is not a compliance or an overdraft account.

Env-A 3203.29 "Heat input" means heat derived from the combustion of fuel in a budget source and does not include the heat derived from preheated combustion air, recirculated flue gas, or exhaust from other sources.

Env-A 3203.30 "Indirect heat exchanger" means combustion equipment in which the flame and/or products of combustion are separated from any contact with the principal material in the process by metallic or refractory walls which includes, but is not limited to, the following:

- (a) Steam boilers;
- (b) Vaporizers;
- (c) Melting pots;
- (d) Heat exchangers;
- (e) Column reboilers;
- (f) Fractioning column feed preheaters;
- (g) Reactor feed preheaters; and
- (h) Fuel-fired reactors such as:
 - (1) Steam hydrocarbon reformer heaters; and
 - (2) Pyrolysis heaters.

Env-A 3203.31 "LN" means Lost Nation station.

Env-A 3203.32 "Maximum heat input capacity" means the ability of a budget source to combust a stated maximum amount of fuel on a steady-state basis, as determined by the physical design and characteristics of the unit, and is expressed in millions of British Thermal Units (MMBTU) per unit of time.

Env-A 3203.33 “MK” means Merrimack station.

Env-A 3203.34 “NT” means Newington station.

Env-A 3203.35 “Nameplate capacity” means the maximum unrestricted electrical generating output in MWe that a generator can sustain over a specified period of time as measured in accordance with the United States Department of Energy standards.

Env-A 3203.36 “Net electric output (EO)” means the final output of energy from a process after deducting any energy output consumed in any way related to generating energy through that process.

Env-A 3203.37 “Net thermal output (TO)” means the thermal energy, in million British thermal units output (MMBtu_{out}), that is produced through a process and is used for industrial, commercial, heating, or cooling purposes after the subtraction of heat for boiler feed or combustion air preheating.

Env-A 3203.38 “New budget source” means a budget source that commenced operation on or after January 1, 2007.

Env-A 3203.39 “NOx allowance tracking system (NATS)” means the computerized system operated and maintained by ~~the EPA or~~ the department for purposes of tracking allowance use for the Acid Rain Program, and for purposes of this chapter, used to track the number of allowances held and used by any person.

Env-A 3203.40 “NOx emissions tracking system (NETS)” means the computerized system operated and maintained by the EPA for purposes of tracking emissions for the Acid Rain Program, and for purposes of this chapter, used to track NOx emissions from budget sources.

Env-A 3203.41 “Non-emitting generating systems” means devices for generating electricity, including but not limited to hydroelectric, nuclear, geothermal, wind, or solar power, that do not combust fossil fuel or emit NOx emissions and have a nameplate capacity of 15 MW or greater commencing or increasing operation after December 31, 1990.

Env-A 3203.42 “Non-Part 75 budget source” means any budget source not subject to the requirements for emissions monitoring adopted pursuant to Section 412 of the Clean Air Act Amendments of 1990 and codified at 40 CFR 75.

Env-A 3203.43 “OTC MOU” means the memorandum of understanding signed by representatives of ~~ten~~ ***10*** states and the District of Columbia as members of the ozone transport commission on September 27, 1994.

Env-A 3203.44 “OTR” means the ozone transport region as designated by Section 184(a) of the Clean Air Act Amendments of 1990.

Env-A 3203.45 “Overdraft account” means the NATS account established by the administrator for each facility where there are 2 or more budget sources.

~~Env A 3203.46 “Phase II budget source” means the following PSNH sources: MK1 and 2; MK CT1 and 2; SR4 through 6; SR CT1; NT1, WL1 and LN1.~~ ***no longer used in rules***

~~Env A 3203.47 “Phase III budget source” means all budget source listed in Env A 3203.46 plus Granite Ridge Energy and Newington Energy.~~ ***no longer used in rules***

~~Env A 3203.48 “Phase IV budget source” means a budget source that receives an allowance allocation under Env 3207.04.~~ ***no longer used in rules***

Env-A 3203.49**~~46~~** “Project sponsor” means:

(a) For purposes of eligibility under Env-A 3207.12(b)(2)a., any person who is a New Hampshire electric consumer; and

(b) For purposes of eligibility under Env-A 3207.12(b)(2)b. and Env-A 3207.12(b)(2)c., any owner or operator of a non-emitting generating system or renewable energy project, including but not limited to any:

- (1) Holding company;
- (2) Utility system; or
- (3) Plant owner, operator, or manager.

Env-A 3203.~~5047~~ ***“PSNH Eversource”*** means ***Eversource Energy, formerly known as*** Public Service Company of New Hampshire (***PSNH***), or its successor(s)-in-interests or assignee(s) or any organizational unit thereof.

Env-A 3203.~~5148~~ ***“Recorded”*** for the purposes of an allowance transfer or deduction means an account in the NATS that has been updated by the administrator with the particulars of an allowance transfer or deduction.

Env-A 3203.~~5249~~ ***“Renewable energy projects”*** mean power generation during the current control period from technologies that produce electricity from small-scale hydro energy, geothermal energy, fuel cells, wind energy, solar thermal energy, photovoltaics, methane waste, or biomass-to-energy plants. The term does not include power generation from combustion or pyrolysis of municipal solid waste, demolition waste, or construction waste.

Env-A 3203.~~5350~~ ***“Small scale hydro energy”*** means water power production facilities of not more than 80 megawatts nameplate capacity.

Env-A 3203.~~5451~~ ***“SR”*** means Schiller station.

Env-A 3203.~~5552~~ ***“Submitted”*** means sent to the appropriate authority under the signature of the AAR.

Env-A 3203.~~5653~~ ***“Submittal date”*** means the date of the official U.S. Postal Service postmark, or an electronic time stamp.

Env-A 3203.~~5754~~ ***“WL”*** means White Lake station.

PART Env-A 3204 NO_x REDUCTION REQUIREMENTS - RESERVED

PART Env-A 3205 NO_x EMISSION BUDGET

Env-A 3205.01 NO_x Budget. The NO_x budget shall be no more than 3,000 tons during each control period.

PART Env-A 3206 GENERAL PROVISIONS

Env-A 3206.01 Limited Authorization.

(a) An allowance shall be an authorization to emit one ton of NO_x, valid only for the purposes of meeting the requirements of this chapter.

(b) The owner or operator of each budget source shall, not later than November 30 of each calendar year, hold a quantity of NO_x allowances in the budget source's current year NATS account that is equal to or greater than the total NO_x emitted from that budget source during the period May 1 through September 30 of the subject year.

(c) All allowances shall be allocated, transferred, or used as whole allowances.

(d) To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

Env-A 3206.02 New **Budget** Sources.

(a) A ***new*** budget source that ~~is not defined in Env-A 3203.47~~ ***commences operation after the 2015 effective date of this chapter*** shall obtain allowances in accordance with Env-A 3207.08 in an amount equal to the new budget source's actual emissions in order to operate during each control period ~~after 2002~~ for a maximum of 4 consecutive control periods.

(b) For new or modified ***budget*** sources subject to the ~~New Source Review~~ (NSR) requirements pursuant to Section 173 of the Act, ~~offsets~~ ***any allowances converted to discrete emissions reductions (DERs), as specified in Env-A 3207.05,*** shall be ~~obtained in accordance with Env-A 618 and the Act~~ ***converted at a one-to-one ratio and used as offsets, in accordance with Env-A 3100.***

~~(c) For the purposes of (a) above, the following programs shall serve as a means for new or modified sources to obtain offsets:~~

- ~~(1) Env-A 3100, the Discrete Emissions Reductions (DERs) Trading Program; or~~
- ~~(2) Env-A 3000, the Emissions Reduction Credits (ERCs) Trading Program.~~

~~(d)~~ Allowances ~~shall not be considered offsets for purposes of this chapter, although allowances which~~ ***that*** are used to satisfy the requirements of this chapter for actual ozone season emissions shall also be used to satisfy the ozone season portion of the NSR offset requirement.

~~(e)~~ Allowances not used to satisfy the requirements of this chapter, ~~and not banked, may be converted to DERs in accordance with Env-A 3100, for the sole purpose of being~~ ***and not*** used to satisfy a portion of the NSR offset requirement pursuant to ~~(a-b)~~ above, ***may be converted to DERs and sold in accordance with Env-A 3100.***

PART Env-A 3207 ALLOWANCE ALLOCATION

Env-A 3207.01 Implementation of the Budget.

(a) Implementation of the emission budget pursuant to Env-A 3205 shall be accomplished through the allocation of allowances to budget sources.

(b) Allowances shall be allocated to budget sources and unused allowances shall be banked, traded, or retired in accordance with this chapter.

Env-A 3207.02 Statewide Total Allowances.

(a) The department shall allocate 2,400 allowances to budget sources for each control period.

(b) Subject to (c) and (d) below, the department shall retain 600 allowances in a multi-purpose set-aside account for the control period each year for purposes of the following, in order of priority:

- (1) Allocation of some or all of the allowances to new sources pursuant to Env-A 3207.08~~(b)~~;
- (2) Allocation of some or all of the allowances to end-use efficiency projects, non-emitting generating systems, or renewable energy projects pursuant to Env-A 3207.12;
- (3) Banking;
- (4) Auctioning some or all of the allowances; and
- (5) Retiring some or all of the allowances for the purpose of environmental benefit.

(c) In accordance with RSA 125-J:4-b and RSA 125-J:12,II, any proposed allocation of allowances from the multi-purpose set-aside account pursuant to (b)(4) or (5) above, shall be submitted to the air pollution advisory committee for review and recommendation at least 30 days prior to the allocation.

(d) The department shall retire a minimum of 100 allowances from the multi-purpose set-aside account for the purpose of environmental benefit for each control period.

Env-A 3207.03 Allocation of Allowances. - RESERVED

Env-A 3207.04 Allowance Allocation Methodology.

(a) By April 30 of each year, the department shall calculate NOx allowance allocations for each budget source for each subsequent control period in accordance with (c), (d), (e), and (g) below.

(b) The department shall submit to the NATS administrator the NOx allowance allocations for the control period that is one year after the applicable deadline for submission.

(c) To calculate the number of allowances to be allocated to electric generation budget sources for the purposes of (d) below, the following shall apply:

- (1) EO(y-2) means a unit's net electric output in MWh for the control period 2 years prior to y;
- (2) EO(y-3) means a unit's net electric output in MWh for the control period 3 years prior to y;
- (3) TO(y-2) means a unit's net thermal output in MMBtus_{out} for the control period 2 years prior to y;
- (4) TO(y-3) means a unit's net thermal output in MMBtus_{out} for the control period 3 years prior to y;
- (5) UAA(y) means a unit's allocation for year y adjusted so the total control period allocation does not exceed the NOx budget; and
- (6) UUA(y) means a unit's unadjusted allocation for year y.

(d) To calculate the adjusted allocation for electric generation budget sources, for each control period:

- (1) The unit's average net electric output in MW-hrs for the control periods 2 and 3 years prior to the current control period shall be multiplied by 1.5 lbs per MW-hr and divided by 2,000 lb/ton and added to the unit's average net thermal output in MMBtus for the control periods 2 and 3 years prior to the current control period multiplied by 0.22 lb/MMBtu and divided by 2,000 lb/ton to calculate the unit's unadjusted allocation for the current control period, as in the formula below:

$$UUA(y) = \frac{((EO(y-2) + EO(y-3))/2) \times 1.5 \text{ lbs/MW-hr}}{2,000 \text{ lb/ton}} + \frac{((TO(y-2) + TO(y-3))/2) \times 0.22 \text{ lb/MMBtu}}{2,000 \text{ lb/ton}}$$

- (2) The product, as calculated in (d)(1) above, shall be multiplied by 2,400 and divided by the sum of all budget sources' unadjusted allocations, as in the formula below:

$$UAA(y) = \frac{UUA(y) \times 2,400}{\text{sum of all budget sources' } UUA(y)}$$

(e) To calculate the number of allowances to be allocated to any new steam generation budget source that is not an electric generating device for the purposes of (f) and (g) below, the following shall apply:

- (1) UUA(y) means a unit's unadjusted allocation for year y;
- (2) HI(y-2) means a unit's heat input in MMBtus for the control period 2 years prior to year y;
- (3) HI(y-3) means a unit's heat input in MMBtus for the control period 3 years prior to year y; and
- (4) UAA(y) means a unit's allocation for year y adjusted so the total control period allocation does not exceed the NOx budget.

(f) To calculate the adjusted allocation for any new steam generation budget source that is not an electric generating device, for each control period:

(1) The unit's average heat input in MMBtus for the control periods 2 and 3 years prior to the current control period shall be multiplied by 0.17 lb/MMBtu and divided by 2,000 lb/ton to calculate the unit's adjusted allocation for the current control period, as in the formula below:

$$UUA(y) = \frac{((HI(y-2) + HI(y-3))/2) \times 0.17 \text{ lb/MMBtu}}{2,000 \text{ lb/ton}}$$

(2) The product, as calculated in (i)(1) above, shall be multiplied by 2,400, and divided by the sum of all budget sources' unadjusted allocations, as in the formula below:

$$UAA(y) = \frac{UUA(y) \times 2,400}{\text{sum of all budget sources' } UUA(y)}$$

(g) The department shall determine heat input in accordance with Env-A 3212 and 40 CFR 75.

(h) Using the best available data as reported by the budget source to the Energy Information Administration and to the department no later than April 15 of each year, the department shall determine the net thermal and electric output for the budget source.

Env-A 3207.05 Conversion of Allowances to DERs. A budget source that converts unused allowances to DERs in accordance with Env-A 3206.02(~~ed~~) and the procedures for DER generation pursuant to Env-A 3103, ~~and then uses those DERs~~, shall surrender those converted allowances as if they had been used for actual emissions. ~~Under no other circumstances shall unused allowances be converted to, or used as, DERs or ERCs.~~

Env-A 3207.06 Shutdowns. - RESERVED

Env-A 3207.07 No Property Rights.

(a) Neither an allowance nor any future allocations, which are subject to modification by the division, shall constitute a security or other form of property.

(b) Allowances shall not be used prior to the control period for which such allowances are allocated.

Env-A 3207.08 New Budget Sources.

~~(a) Pursuant to Env-A 3214, all, including new, budget sources shall report their control period emissions to the NETS administrator by October 30 of each year.~~

(~~ba~~) No later than October 30, new budget sources shall submit a request to the division to transfer allowances from the division's set-aside account to the new budget sources' compliance accounts up to the lesser of:

- (1) Its total emissions reported; or
- (2) Its permitted allowable emissions based on actual fuel use and the lowest achievable emission rate using the cleanest permitted fuel.

(~~eb~~) By November 30, the division shall transfer the allowances requested in accordance with (~~ba~~) above, in the order that preliminary determinations to grant permits to construct were made by the division in accordance with Env-A 618.07(d), subject to allowance availability in accordance with (d) below.

(~~ec~~) If the number of allowances remaining in the set-aside account is insufficient to meet the requirements of a new budget source in accordance with (~~ba~~) above, then the balance of the allowances in the set-aside account shall be transferred to the new budget source, and the ***new budget source shall acquire the*** remaining required allowances ~~shall be acquired~~ through trading.

Env-A 3207.09 Post-Season Retirement of Allowances. - RESERVED

Env-A 3207.10 Return of Unused Allowances by New Budget Sources.

(a) Within 15 days of a final compliance determination, all new budget sources shall transfer any unused allowances remaining in their compliance accounts to the division's set-aside account.

(b) This section shall not affect the amount of allowances that a new budget source may request for subsequent seasons in accordance with Env-A 3207.08.

Env-A 3207.11 ~~***RESERVED***~~ Return of Unused Allowances by Phase III and Phase IV Budget Sources.

- ~~(a) Within 15 days of a final compliance determination pursuant to Env A 3215:~~
- ~~(1) All phase III budget sources shall transfer unused allowances in accordance with Env A 3209, in an amount up to, but not exceeding, the balance of their new source review offset requirement, if any, to phase II budget sources; and~~
 - ~~(2) All phase II budget sources shall transfer to the phase III budget sources one DER for each allowance transferred, prior to the transfer of the allowances in (1) above.~~
- ~~(b) Within 15 days of a final compliance determination pursuant to Env A 3215, all phase III budget sources that have never commenced operation shall:~~
- ~~(1) Transfer 50% of their unused allowances to phase II budget sources; and~~
 - ~~(2) Transfer 50% of their unused allowances to the multi-purpose set aside account.~~
- ~~(c) For control periods beyond 2005, phase IV budget sources shall transfer unused allowances in the same manner as phase III budget sources under (a) and (b), above.~~

Env-A 3207.12 End-Use Efficiency Projects, Non-Emitting Generating Systems, and Renewable Energy Projects Set-Aside Allocation.

(a) The end-use efficiency projects, non-emitting generating systems, and renewable energy projects set-aside allocation shall consist of the remainder of the multi-purpose set-aside allocation after deduction of 100 retired allowances pursuant to Env-A 3207.02(d), and allowances actually allocated to new sources.

(b) For each control period, the department shall determine NOx allowance distributions from the end-use efficiency projects, non-emitting generating systems, and renewable energy projects set-aside allocation in accordance with the following procedures:

- (1) The department shall open and manage a general account for the multi-purpose set-aside allocation;
- (2) Project sponsors of any of the following types of projects shall be eligible for the receipt of NOx allowances from the energy efficiency and renewable energy set-aside allocation:
 - a. End-use efficiency projects;
 - b. Non-emitting generating systems; and
 - c. Renewable energy projects;
- (3) The authorized account representative of a project sponsor shall submit a written request ***via e-mail, fax or hard copy*** to the department to distribute a number of NOx allowances from the end-use efficiency projects, non-emitting generating systems, and renewable energy projects set-aside allocation to the general account of the project sponsor;
- (4) ***The department shall multiply the generation or avoided generation, in MWh, by the New England marginal emission rate, as most recently reported by ISO New England, Inc. in tons/MWh, to determine the amount of NOx allowances.*** ~~transfer request shall include the~~

~~following information to assure that projects demonstrate real, quantifiable, and surplus NOx emissions reductions or avoidances during a control period(s):~~

- ~~a. A notice of generation of DERs in accordance with Env A 3103.08;~~
- ~~b. A quantification protocol in accordance with Env A 3107;~~
- ~~c. A request for conversion of some or all of those DERs to NOx allowances; and~~
- ~~d. A statement certifying that emission reductions which are converted to NOx allowances shall not be used as DERs.~~

(c) No unused allowances remaining in the multi-purpose set-aside account at the end of a calendar year shall be allocated to new sources for a future control period, or banked for any other future allocation by the department, until the department has acted upon all notices and requests for conversion filed pursuant to (b)(43)e, above, and outstanding as of the end of such calendar year.

(d) If more than one project sponsor of an end-use energy efficiency project, non-emitting generating system, or renewable energy project requests the distribution of NOx allowances and the number of NOx allowances that are subject to department approved requests exceeds the number of NOx allowances in the end-use efficiency projects, non-emitting generating systems, and renewable energy projects set-aside allocation, the department shall distribute NOx allowances from the end-use efficiency projects, non-emitting generating systems, and renewable energy projects set-aside allocation for each project or system as specified in (e), (f), and (g), below.

(e) For a total of 10 consecutive control periods following the date that the project commences operation, end-use energy efficiency projects and renewable energy projects shall either:

- (1) Receive 100% of their department approved requests for each control period; or
- (2) If the total department approved requests from new projects alone exceeds the number of NOx allowances available, receive NOx allowances for each control period on a basis proportional to the number of NOx allowances approved for each project.

(f) End-use energy efficiency projects and renewable energy projects that commenced operation 10 years prior to the beginning of the current control period shall receive NOx allowances from the remainder of available allowances after allocation of allowances in accordance with (e) above on a basis proportional to the number of NOx allowances approved for each project and each system in accordance with (g), below.

(g) Non-emitting generating systems shall receive NOx allowances from the remainder of available allowances after allocation of allowances in accordance with (e) above on a basis proportional to the number of NOx allowances approved for each system and each project in accordance with (f), above.

PART Env-A 3208 PERMITS

Env-A 3208.01 Permit Application.

(a) Emission reductions which must be achieved to meet the requirements of this program shall be subject to permit requirements pursuant to Env-A 600 as applicable, including but not limited to:

- (1) The permit reopening procedures for title V operating permits set forth in Env-A 609.19;
- (2) The permit amendment procedures for temporary permits and state permits to operate set forth in Env-A 612.04;
- (3) The permit notice and hearing procedures for temporary permits and state permits to operate set forth in Env-A 621; and
- (4) The title V operating permit amendment, modification, and revision procedures set forth in Env-A 612; and

(5) The permit notice and hearing procedures for title V operating permits set forth in Env-A 622.

(b) All determinations regarding alternative monitoring methodologies, in accordance with the monitoring and reporting requirements as provided in Env-A 3212 and in Subpart H of 40 CFR 75, shall be incorporated in a temporary permit, state permit to operate, or title V operating permit pursuant to the permit issuance, renewal, or significant permit modification procedures set forth in Env-A 612.

~~(c) The owner or operator of a budget source shall apply for permits for all equipment and control apparatus necessary for compliance with this chapter no later than 30 days from the effective date of this chapter.~~ ***no longer needed***

Env-A 3208.02 Operating Permits.

(a) The operating permit for each budget source shall contain provisions for implementation of this program, as follows:

(1) The permit shall contain language which prohibits the budget source from emitting NO_x during each control period, in excess of the amount of allowances held in the budget source's compliance account for the control period as of the allowance transfer deadline; ***and***

(2) The permit shall contain language that authorizes the trading of allowances for purposes of compliance with this program; ~~and.~~

~~(3) The permit shall also contain reference to the NATS compliance account for the budget source and the AAR.~~

(b) No revision of an operating permit shall be necessary or required for increases or decreases in emissions that:

(1) Are authorized by allowances acquired or transferred in compliance with this chapter by the allowance transfer deadline;

(2) Are in compliance with the authorization for trading contained in the permit; and

(3) Do not exceed the emissions allowable under the permit for the budget source whether expressed therein as a rate of emissions or in terms of total emissions.

(c) No revision of an operating permit shall be necessary or required for increases or decreases in allowances held by the budget source and which are acquired or transferred in compliance with this regulation and in compliance with the authorization for trading contained in the permit.

PART Env-A 3209 ALLOWANCE TRANSFER AND USE

Env-A 3209.01 Marketable Emissions Authorizations. Allowances shall be marketable emissions authorizations that may be bought, sold or traded at any time during any year, not just the current year.

Env-A 3209.02 Limited Authorizations. Allowances ~~shall only be used~~ for compliance with this program ***shall only be used*** in a designated compliance year by being in a compliance account as of the allowance transfer deadline, or by being transferred into the compliance account by an allowance transfer submitted by the allowance transfer deadline.

Env-A 3209.03 Transfer Procedures. The following ~~procedures shall be employed to enact an~~ ***apply to*** allowance transfers:

(a) The ~~transfer request shall be authorized and certified by the AAR for the originating account~~ ***shall authorize and certify the transfer request;***

- (b) The transfer request shall be in writing or in electronic form;
- (c) The AAR for the originating account shall provide a copy of the transfer request to each owner or operator of the budget source; and
- (d) The transfer request, ~~submitted pursuant to (b) above,~~ shall contain the following information:
 - (1) The account number identifying both the originating account and the acquiring account;
 - (2) The name and address associated with the owners of the originating account and the acquiring account;
 - (3) ~~Identification of~~ ***The serial number or range of serial numbers for each allowance or block of allowances being transferred; and***
 - (4) A statement of certification stated verbatim as follows: "I am authorized to make this submission on behalf of the owners and operators of the budget source and I hereby certify, under penalty of law, that I have personally examined the foregoing and am familiar with the information contained in this document, and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment."

Env-A 3209.04 Transfer Processing. Transfer requests shall be processed by the NATS in order of receipt.

Env-A 3209.05 Transfer Completion. ~~The A transfer is~~ ***shall be*** complete when the ~~following information has been verified by the NATS administrator~~ ***has verified that:***

- (a) Each allowance listed in the transfer request is held by the originating account at the time the transfer was recorded;
- (b) The acquiring party has an account in the NATS; and
- (c) The transfer request has been filed by the person named as AAR for the originating account.

Env-A 3209.06 Transfer Validation. Allowance transfers determined to be valid, through verification by the NATS administrator, shall be recorded in the NATS by deducting the specified allowances from the originating account and adding them to the acquiring account.

Env-A 3209.07 Transfer Notification.

(a) ~~Notification of an~~ ***The NATS administrator shall provide written notice to the following persons confirming that a valid allowance transfer shall be provided by the NATS administrator to the following has been completed:***

- (1) The AAR for the originating account; ***and***
- (2) The AAR for the acquiring account; ~~and~~
- (3) ~~The director, if either the acquiring account or the originating account is located in the state.~~
- (b) The notification ~~pursuant to~~ ***required by*** (a), above, shall include the following information:
 - (1) The effective date of the transfer;
 - (2) Identification of the originating account and the acquiring account by name as well as by

account number; and

(3) The number of allowances transferred and their serial numbers.

(c) The notification ~~pursuant to~~ ***required by*** (a), above, shall be in writing or in electronic form.

Env-A 3209.08 Periodic Transfers.

(a) When a budget source determines that some or all of its allocated allowances should be transferred to another budget source for the remainder of the current allocation period, the AAR of the originating account shall submit a request for transfer that states this intent to the NATS administrator.

(b) A request for transfer of allowances for the remainder of the allocation period shall conform to the ~~specifications~~ ***requirements*** of Env-A 3209.03.

(c) A request for transfer of allowances for the remainder of the allocation period shall be submitted to the division with a letter requesting that future allowance allocations be made directly to the acquiring account.

Env-A 3209.09 Price Disclosure. Subject to a claim of confidentiality in accordance with Env-A 103, the budget source shall make available, to any person, all information regarding transaction cost and allowance price.

Env-A 3209.10 Use of Allowances by Utilities. Pursuant to RSA 125-J:5, X, the use of allowances by a utility as defined in RSA 362:2 shall be subject to such additional conditions as ordered pursuant to applicable law by the PUC.

PART Env-A 3210 ALLOWANCE BANKING

Env-A 3210.01 Retention of Unused Allowances. The banking of allowances shall be permitted to allow the retention of unused allowances from one year to a future year in either a compliance account, an overdraft account, or a general account.

Env-A 3210.02 Account Designation. Unused allowances as of the end of the allowance transfer deadline shall be retained in the compliance, overdraft, or general account and designated as banked allowances after the administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to Env-A 3215.

Env-A 3210.03 Requirements for Use. Banked allowances may be used in the current year on a ~~one-~~ ~~for-one~~ basis.

PART Env-A 3211 NO_x ALLOWANCE TRACKING SYSTEM (NATS)

Env-A 3211.01 Database Maintenance for Allowance Transfer and Use.

(a) The NATS shall be maintained by the administrator as the official database for all allowance use and transfer.

(b) The NATS administrator shall track and maintain the following information:

- (1) The allowances allocated to each budget source;
- (2) The allowances held in each account;
- (3) The allowances used by each budget source during each control period;
- (4) Accounts established for each budget source to determine compliance for the source;

- (5) Accounts opened by individuals or entities, upon request, that are not used to determine compliance;
- (6) Allowance transfers, as submitted voluntarily by the source; and
- (7) Deductions of allowances for compliance purposes.

Env-A 3211.02 Compliance Accounts.

- (a) The NATS administrator shall establish a compliance account for each budget source for the purpose of holding current compliance year and future year allowances.
- (b) The NATS administrator shall label each account with an account number.
- (c) The NATS administrator shall maintain the following information for each compliance and overdraft account:
 - (1) Name of account owner;
 - (2) Mailing address of account owner;
 - (3) Name of AAR;
 - (4) Mailing address of AAR;
 - (5) Phone number of AAR;
 - (6) Street address of associated budget source; and
 - (7) State in which the budget source is located.

Env-A 3211.03 General Accounts.

- (a) The NATS administrator shall allow for the establishments of general accounts.
- (b) Any person or group may open a general account by designating an AAR and providing the NATS administrator with an account certificate of representation in accordance with Env-A 3211.04 and Env-A 3211.05, respectively.

Env-A 3211.04 Authorized Account Representative.

- (a) Only the AAR shall request transfers of allowances in a NATS account.
- (b) For each compliance account, overdraft account, or general account, one AAR and one alternate shall be identified to represent the owner or operator of the budget source, or owner of a general account.
- (c) The AAR shall be responsible for all transactions and reports submitted to the NATS.
- (d) The alternate AAR shall have the same authority as the primary representative, however; all correspondence from the NATS administrator shall be directed to the primary AAR.
- (e) The requirements for an AAR shall apply to both the owners of a general account and to the owner or operator of a budget source's compliance account and overdraft account.

Env-A 3211.05 Account Certificate of Representation.

- (a) The AAR shall be officially designated upon receipt by the NATS administrator of a form entitled "Account Certificate of Representation."

(b) The account certificate of representation shall be an agreement of representation containing the following information:

- (1) Identification of the budget source by plant name, state and boiler number for which the account certification of representation for each compliance account is submitted;
- (2) The name, address, telephone and facsimile number of the authorized AAR and any alternate; and
- (3) A list of owners and operators of the budget source for each compliance account.

(c) The account certificate of representation shall be signed by the AAR.

(d) The account certificate of representation for each compliance account shall include the following statement, verbatim:

“I certify that I, ____ (name)____ was selected as the AAR as applicable by an agreement binding on the owners and operators of the budget source legally designated as_____(name of facility)_____. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx Budget Trading Program on behalf of the owners and operators of the NOx budget source and of each NOx budget unit at the source, and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department, the administrator, or a court regarding the source or unit.”

(e) ~~Designation of A~~ ***budget source shall designate*** an AAR ~~for each budget source shall be completed as part of the permit application for new NOx budget sources.~~

(f) A new AAR shall be designated by submitting a revised “Account Certificate of Representation” to the NATS administrator, with the following information:

- (1) All of the information pursuant to (b) and (c) above; and
- (2) The name of the AAR who is being replaced.

(g) The NATS administrator shall confirm the change of AAR once the change is recorded in the NATS.

Env-A 3211.06 Serial Numbers. Each facility account shall have a unique identification number and each allowance shall be assigned a unique serial number which indicates the year of allocation.

PART Env-A 3212 EMISSIONS MONITORING

Env-A 3212.01 General Requirements.

(a) The owners, operators, and the AAR of a NOx budget source shall comply with the monitoring and reporting requirements as provided in this part and in 40 CFR 75, Subpart H.

(b) For purposes of complying with the requirements of (a) above, the definitions in 40 CFR 72.2 and 40 CFR 75 shall apply, except that:

- (1) The term “affected unit” shall be replaced with the term “budget source” as defined in Env-A 3203.17; and
- (2) The term “designated representative” shall be replaced with the term “AAR” as defined in Env-A 3203.12.

Env-A 3212.02 Requirements for Installation, Certification, and Data Accounting. The owner or operator of each NOx budget source shall:

- (a) Install all monitoring systems required under this part for monitoring NOx mass, including all systems required to monitor NOx emission rate, NOx concentration, heat input, and flow, in accordance with 40 CFR 75.72 and 75.74;
- (b) Install all monitoring systems for monitoring heat input for developing NOx allowance allocations, if required under Env-A 3212.07;
- (c) Successfully complete all certification tests required and meet all other provisions of this part and 40 CFR Part 75 applicable to the monitoring systems under paragraphs (a) and (b), above; and
- (d) Record and report data from the monitoring systems under paragraphs (a) and (b), above.

Env-A 3212.03 Compliance Dates. The owner or operator shall meet the following requirements on or before the following dates:

(a) All existing NOx budget sources shall comply with the requirements of this part. NOx budget sources that commenced operation on or after January 1, 2007 and that report on an annual basis shall comply with the requirements of this part by the earlier of the following dates:

- (1) Within 180 days of commencing operation; or
- (2) Within 90 days of commencing commercial operation;

(b) NOx budget sources that commenced operation on or after January 1, 2007 and that report on a control season basis shall comply with the requirements of this part by the earlier of the following dates:

- (1) Within 180 days of commencing operation; or
- (2) Within 90 days of commencing commercial operation; or
- (3) If the applicable deadline under (b)(1), above, does not occur during a control period, then May 1 immediately following the date determined in accordance with (b)(1), above; and

(c) For a NOx budget source with a new stack or flue for which construction is completed after the applicable deadline under paragraph (a) or (b), above:

- (1) Within 90 days after emissions first exit to the atmosphere through the new stack or flue; or
- (2) If the unit reports on a control season basis and the applicable deadline under (c)(1), above, does not occur during the control period, then May 1 immediately following the applicable deadline in (c)(1), above.

Env-A 3212.04 Reporting Data Prior to Initial Certification. The owner or operator of a NOx budget source subject to Env-A 3212.03(a) or (b) shall from the date and hour that the unit starts operating until all required certification tests are successfully completed:

- (a) Determine, record, and report NOx mass and heat input if required for purposes of allocations; and
- (b) Record and report NOx emission rate and heat input or NOx concentration and stack flow in accordance with 40 CFR 75.70(g), and any other values required to determine NOx mass.

Env-A 3212.05 Prohibitions.

(a) No owner or operator of any source monitored under 40 CFR 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required

continuous emission monitoring system without having obtained prior written approval from the department and EPA in accordance with this part.

(b) No owner or operator of any source monitored under 40 CFR 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this part and 40 CFR 75 except as provided for in 40 CFR 75.74.

(c) No owner or operator of any source monitored under 40 CFR 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this part and 40 CFR 75 except as provided for in 40 CFR 75.74.

(d) No owner or operator of any source monitored under 40 CFR 75.72(b)(2)(ii) shall permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this part, except under any one of the following circumstances:

- (1) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this part and 40 CFR Part 75, by the department for use at that unit that provides emission data for the same pollutant or parameter as the discontinued monitoring system; or
- (2) The AAR submits notification of the date of certification testing of a replacement monitoring system in accordance with the applicable provisions of this part.

Env-A 3212.06 Initial Certification and Recertification Procedures for Sources Subject to the Acid Rain Program. The owner or operator of a NO_x budget source that is subject to an acid rain program emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR 75, except that:

(a) If, prior to January 1, 1998, the administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the AAR shall resubmit the petition to the administrator to determine if the approval applies under this chapter; and

(b) For any additional continuous emission monitoring systems ("CEMS") required under the common stack provisions in 40 CFR 75.72, or for any NO_x concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of Env-A 3212.07.

Env-A 3212.07 Initial Certification and Recertification Procedures for Sources Not Subject to the Acid Rain Program.

(a) The owner or operator of a NO_x budget source that is not subject to an acid rain program emissions limitation shall comply with the initial certification and recertification procedures of this part, except that:

- (1) The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 shall also meet the requirements of Env-A 3212.08; and
- (2) The owner or operator of a unit that qualifies to use an alternative monitoring system under 40 CFR 75, Subpart E shall also meet the requirements of Env-A 3212.09.

(b) The owner or operator shall ensure that each monitoring system required by 40 CFR 75, Subpart H, including the automated data acquisition and handling system, successfully completes all of the initial certification testing required under 40 CFR 75.20.

(c) The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in Env-A 3212.03.

(d) Initial certification according to 40 CFR 75.20 shall be required whenever the owner or operator installs a monitoring system in order to meet the requirements of this part in a location where no such monitoring system was previously installed.

(e) Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that significantly affects the ability of the system to accurately measure or record NO_x mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or to 40 CFR 75, Appendix B the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b).

(f) Whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that significantly changes the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b).

(g) Changes which require recertification in accordance with (e) and (f) above, include, but are not limited to:

- (1) Replacement of the analyzer;
- (2) Change in location or orientation of the sampling probe or site; and
- (3) Change in the flow rate monitor polynomial coefficients.

(h) The AAR shall submit to the department and EPA a written notice of the dates of certification in accordance with the notification requirements of this part.

(i) The AAR shall submit to the department a complete certification application, including the information specified in 40 CFR 75, Subpart H.

(j) A certification application shall be considered complete when all of the applicable required information has been received by the department.

(k) If the certification application is not complete, then the department shall issue a written notice of incompleteness that sets a reasonable date by which the AAR shall submit the additional information required to complete the certification application.

(l) The department shall issue a notice of disapproval of the certification application within 120 days of receipt of the certification application if:

- (1) The AAR does not comply with the notice of incompleteness by the date specified in (k), above; or
- (2) The certification application shows that any monitoring system or component thereof does not meet the performance requirements of this part and 40 CFR 75.

(m) Upon issuance of a notice of disapproval pursuant to (l), above, the provisional certification pursuant to (n), below, shall be invalidated by the department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification.

(n) Except for units using the low mass emission methodology excepted pursuant to 40 CFR 75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3).

(o) A provisionally certified monitor pursuant to (n), above, may be used for compliance with this chapter for a period not to exceed 120 days after receipt by the department of the complete certification application, pursuant to (i), above, for the monitoring system or component thereof.

(p) Data measured and recorded by a provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR 75, will be considered valid quality-assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval pursuant to (l), above.

(q) The department shall issue a written notice of approval of the certification application to the owner or operator within 120 days of receipt of the complete certification application if:

(1) The application contains all of the applicable information as set forth in 40 CFR 75; and

(2) The certification application shows that the monitoring system and all components thereof meet the performance requirements of this part and 40 CFR 75.

(r) In the event the department does not issue a notice of approval of the certification application within the time period set forth in (r), above, each monitoring system which meets the applicable performance requirements of 40 CFR 75 and is included in the certification application shall be deemed certified for use under this chapter.

(s) The owner or operator who has been issued a notice of disapproval pursuant to (l), above, shall follow the procedures for loss of certification in accordance with (t), below, for each monitoring system or component thereof which is disapproved for initial certification.

(t) If the department issues a notice of disapproval of a certification application in accordance with (l), above, or a notice of disapproval of certification status in accordance with Env-A 3212.10(b), then:

(1) The owner or operator shall substitute the following values for each hour of unit operation during the period of invalid data, beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i):

a. For units using or intending to monitor for NO_x emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit; and

b. For units intending to monitor for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_x and the maximum potential flow rate of the unit under section 2.1 of appendix A of 40 CFR 75;

(2) The AAR shall submit a notification of certification retest dates and a new certification application; and

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

Env-A 3212.08 Initial Certification and Recertification Procedures for Low Mass Emission Units Using the Excepted Methodologies under 40 CFR 75.19.

(a) The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 shall comply with the following:

(1) The applicable general operating requirements of 40 CFR 75.10;

(2) The applicable requirements of 40 CFR 75.19; and

- (3) The applicable certification requirements of this part.
- (b) The excepted methodology pursuant to (a), above, shall be deemed provisionally certified for use under this chapter, as of the following dates:
 - (1) For units that are reporting on an annual basis:
 - a. For a unit that has commenced operation before its compliance deadline, January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the department review; or
 - b. For a unit that commences operation after its compliance deadline, the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for department review; or
 - (2) For units that are reporting on a control period basis:
 - a. For a unit that commenced operation before its compliance deadline, where the certification application is submitted before May 1, May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the department review;
 - b. For a unit that commenced operation before its compliance deadline, where the certification application is submitted after May 1, May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the department review;
 - c. For a unit that commences operation after its compliance deadline, where the unit commences operation before May 1, May 1 of the year that the unit commenced operation, until the completion of the period for the department's review; or
 - d. For a unit that has not operated after its compliance deadline, where the certification application is submitted after May 1, but before October 1, the date of submission of a certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the department's review.

Env-A 3212.09 Certification/Recertification Procedures for Alternative Monitoring Systems.

- (a) The AAR of each unit applying to use an alternative monitoring system approved by the administrator and, if applicable, the department under 40 CFR 75, Subpart E shall apply for certification to the department prior to use of the system under this chapter.
- (b) The AAR shall apply for recertification following a replacement, modification or change according to the procedures in Env-A 3212.07.
- (c) The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in Env-A 3212.07 and 40 CFR 75.20(f).

Env-A 3212.10 Out of Control Periods.

- (a) Whenever any monitoring system fails to meet the quality assurance requirements of 40 CFR 75, appendix B, data shall be substituted using the applicable procedures in 40 CFR 75, Subpart D, appendix D or appendix E.

(b) Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under this part or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the department shall issue a notice of disapproval of the certification status of such system or component.

(c) For the purposes of this section, an audit shall be either a field audit or an audit of any information submitted to the department or the administrator.

(d) The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the disapproval of certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests in accordance with Env-A 3212.07(t).

(e) The owner or operator shall follow the initial certification or recertification procedures for each disapproved system.

Env-A 3212.11 Notifications. The AAR for a NO_x Budget source shall submit written notice to the department and the administrator in accordance with 40 CFR 75.61, except that if the unit is not subject to an acid rain program emissions limitation, the notification shall only be required to be sent to the department.

Env-A 3212.12 Recordkeeping and Reporting General Provisions.

(a) The AAR shall comply with all record keeping and reporting requirements in this part and with the requirements of Env-A 3211.05.

(b) Any submission made in accordance with 40 CFR 75, Subpart F or Subpart G which includes data and information required under this part or under 40 CFR 75, Subpart H, shall be signed by both the AAR and the designated representative as that term is defined in Env-A 101.60.

Env-A 3212.13 Monitoring Plans.

(a) The owner or operator of a unit subject to an acid rain emissions limitation shall comply with the requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by 40 CFR 75, Subpart H.

(b) The owner or operator of a unit that is not subject to an acid rain program emissions limitation shall comply with the requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by 40 CFR 75, Subpart H.

Env-A 3212.14 Certification Applications. The AAR shall submit an application to the department within 45 days after completing all initial certification or recertification tests including the information required under 40 CFR Part 75, Subpart H.

Env-A 3212.15 Quarterly Reports. The AAR shall submit quarterly reports, as follows:

(a) If a unit is subject to an acid rain program emission limitation or if the owner or operator of the NO_x budget source chooses to comply with the annual reporting requirements of this part, the AAR shall:

(1) For existing units, submit a quarterly report for each calendar quarter.

(2) For a unit that commences operation after May 1, 2007, submit a report that includes information starting the date and hour corresponding to when the unit commenced operation.

(b) If a NOx budget source is not subject to an acid rain program emission limitation, then the AAR shall either:

- (1) Meet all of the requirements of 40 CFR 75 related to monitoring and reporting NOx mass emissions during the entire year and meet the reporting requirements specified in (a), above; or
- (2) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under 40 CFR 75.74(d)(3) through September 30 of each year in accordance with the provisions of 40 CFR 75.74(b).

(c) The quarterly report pursuant to (b), above, shall be submitted by the AAR for each calendar quarter, beginning with:

- (1) For units that commence operation after May 1, during the control period, the date and hour corresponding to when the unit commenced operation;
- (2) For units that commence operation before May 1 or after September 30 of the year in which the unit commences operation, the earlier of:
 - a. The calendar quarter that includes the date and hour of initial provisional certification; or
 - b. If the certification tests are not completed by May 1 of the year in which the unit commences operation, the first hour on May 1 of the year in which the unit commences operation; or

(d) The AAR shall submit each quarterly report to the administrator within 30 days following the end of the calendar quarter covered by the report.

(e) Quarterly reports shall be submitted in the manner specified in 40 CFR 75, Subpart H and 40 CFR 75.64.

(f) For units subject to an acid rain program emissions limitation, quarterly reports shall include all of the data and information required in 40 CFR Part 75, Subpart H for each NOx budget source, or group of units using a common stack, as well as information required in 40 CFR Part 75, Subpart G.

(g) For units not subject to an acid rain program emissions limitation, quarterly reports shall include all of the data and information required in 40 CFR Part 75, Subpart H for each NOx budget source, or group of units using a common stack.

(h) The AAR shall submit to the administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored.

(i) The certification pursuant to (h), above, shall state that:

- (1) The monitoring data submitted were recorded in accordance with the applicable requirements of this part and 40 CFR 75, including the quality assurance procedures and specifications;
- (2) For a unit with add-on NOx emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NOx emissions; and
- (3) For a unit that is reporting on a control period basis, the NOx emission rate and NOx concentration values substituted for missing data under of 40 CFR 75, Subpart D are calculated using only values from a control period and do not systematically underestimate NOx emissions.

PART Env-A 3213 RECORDKEEPING

Env-A 3213.01 General Recordkeeping. The owner or operator of any budget source shall maintain for each budget source and for ~~five~~ ***5*** years, a file of all measurements, data, reports and other information required by this chapter.

PART Env-A 3214 REPORTING

Env-A 3214.01 Electronic Format.

(a) The AAR for each budget source shall submit ***emissions and operations information***, in electronic format that meets the requirements of the U.S. EPA's Electronic Data Reporting (EDR) convention, ~~emissions and operations information~~.

(b) These data shall be submitted within 30 days of the end of any quarter in which the owner or operator is required to report.

Env-A 3214.02 Pounds per Hour and Pounds per Season. In addition, the owner or operator of a budget source shall provide the NETS administrator, in the same quarterly reports, and in a format consistent with Env-A 3214.01, NOx emissions in pounds per hour for every hour during the control period and cumulative quarterly and seasonal NOx emission data in pounds.

Env-A 3214.03 Quarterly Reporting.

(a) Budget sources subject to 40 CFR 75 shall submit the data required pursuant to Env-A 3214.01 and Env-A 3214.02 to EPA as part of the quarterly reports submitted to EPA for the purpose of compliance with 40 CFR 75.

(b) Budget sources not subject to 40 CFR 75 shall submit quarterly reports to EPA within 30 days from the end of each of the second and third calendar quarters.

Env-A 3214.04 Request for Retirement Exemption.

(a) A budget source that is permanently retired and requests a retirement exemption from the requirements of this section, Env-A 3212, and Env-A 3213, shall comply with the requirements set forth in this section.

(b) To obtain an exemption, the AAR for the budget source shall file a request for retirement exemption with the director, with the following information:

- (1) The identification of the budget source being retired; and
- (2) The date of the budget source's retirement.

(c) The director shall send approval of the request for retirement exemption to the AAR and the NETS administrator.

(d) Division approval shall be in the form of a federally enforceable document, as defined in Env-A 101.

(e) Division approval shall contain conditions of the retirement exemption, including:

- (1) The retirement date;
- (2) A statement revoking the current air quality permits or approvals;
- (3) A requirement to inform the division of any change in the status of the unit; and

- (4) A requirement that the unit meet new source review and permit requirements at any time in the future prior to re-operation of the unit.

PART Env-A 3215 END-OF-SEASON RECONCILIATION

Env-A 3215.01 Determination of Compliance. Monitored emissions data as reported by the budget source to the NETS administrator, and as adjusted by the administrator to be in accordance with Env-A 3211, combined with allowance allocations and transfers recorded in the NATS, shall provide the basis for a determination of compliance with this chapter.

Env-A 3215.02 Request for Deduction of Allowances.

(a) Each year prior to November 30, the AAR shall request the NATS administrator to deduct current year allowances from the compliance account or overdraft account equivalent to the number of available allowances to cover the NOx emissions during the current control period.

(b) This request shall be submitted by the AAR to the NATS administrator no later than the allowance transfer deadline, November 30.

(c) This request shall identify the compliance account or overdraft account from which the deductions are to be made.

(d) This request shall:

(1) Identify the serial numbers of the allowances to be deducted, if desired by the source; or

(2) Not identify serial numbers, in which case allowances usable for that compliance year shall be deducted in the order of their arrival into the unit's account, with allocated allowances being deducted first, followed by the deduction of transferred allowances.

Env-A 3215.03 Deduction of Allowances. Regardless of the request for deductions submitted pursuant to Env-A 3215.02, the NATS administrator shall deduct a number of allowances equal to the current control period NOx emissions from the budget source's compliance account or overdraft account, and determine whether sufficient allowances are in the account equivalent to the emissions.

Env-A 3215.04 Procurement of Additional Allowances. ~~(a)~~ Should the emissions of the budget source in the current control period exceed the allowances in the budget source's compliance account and overdraft account, the budget source shall obtain additional allowances by the allowance transfer deadline so the total number of allowances in the budget source's compliance account and overdraft account, including allowance transfers properly submitted to the NATS administrator by the allowance transfer deadline, equals or exceeds the control period emissions of NOx rounded to the nearest whole ton.

Env-A 3215.05 Noncompliance. Failure to obtain and hold in its compliance account and overdraft account for any control period as of the allowance transfer deadline sufficient allowances equal to or exceeding emissions for the control period, shall result in enforcement action and penalties against the budget source pursuant to Env-A 3217.

PART Env-A 3216 COMPLIANCE CERTIFICATION

Env-A 3216.01 Submittal. For each control period, the AAR for each budget source shall submit an annual compliance certification to the division.

Env-A 3216.02 Deadline. The compliance certification shall be submitted no later than the allowance transfer deadline, November 30 of each year.

Env-A 3216.03 Content. The compliance certification shall contain the following information:

- (a) Identification of the budget source, including:
 - (1) Name;
 - (2) Address;
 - (3) Name of AAR; and
 - (4) NATS account number;
- (b) A statement ***as to*** whether emissions data has been submitted to the NETS:
 - (1) In accordance with the procedures established in Env-A 3214; and
 - (2) In conformance with the requirements of the NETS administrator;
- (c) A statement ***as to*** whether the budget source:
 - (1) Operated in compliance with the allowances allocated for the control period, including those obtained through transfer by the allowance transfer deadline;
 - (2) Holds sufficient allowances in its compliance account and overdraft account for the control period, as of the allowance transfer deadline, to equal or exceed the recorded emissions for the control period; and
 - (3) Was actually operated and maintained in accordance with the applicable monitoring plan;
- (d) A statement of certification that all emissions from the budget source were accounted for, either through:
 - (1) The applicable monitoring; or
 - (2) Application of the appropriate missing data procedures; and
- (e) A statement ~~to indicate~~ ***as to*** whether there were any changes during the current year in the method of:
 - (1) Operation of the budget source; or
 - (2) Monitoring the budget source.

Env-A 3216.04 Compliance Verification. The division shall verify compliance, in accordance with RSA 125-J:7 by the following means:

- (a) Inspection of facility operating records;
- (b) Obtaining information on allowance deduction and transfers from the NATS;
- (c) Obtaining information on emissions from the NETS;
- (d) Information relative to testing emission monitoring devices;
- (e) Requiring the budget source to conduct emissions testing under the supervision of the division.

PART Env-A 3217 ENFORCEMENT PROVISIONS

Env-A 3217.01 Automatic Deduction. In addition to penalties assessed under Env-A 3217.02, if emissions from a budget source exceed allowances held in the budget source's compliance account or overdraft account for the control period as of the allowance transfer deadline, the NATS administrator shall automatically deduct allowances from the budget source's compliance account or overdraft account for the next control period at a rate of 3 allowances for every one ton of excess emissions.

Env-A 3217.02 Determination of Violations. In accordance with RSA 125-J:4-a, for purposes of enforcement of this chapter, the following shall apply:

- (a) In determining the number of days of violation, any excess emissions for the control period shall presume that each day in the control period of 153 days, constitutes a day in violation unless the budget source can demonstrate, through the use of verifiable emission data, that a lesser number of days should be considered; and
- (b) Each ton of excess emissions shall constitute a separate violation.

PART Env-A 3218 PROGRAM AUDITS

Env-A 3218.01 RESERVED

Env-A 3218.02 Audits.

- (a) The division shall conduct an audit of the NOx Budget Program beginning ***within 2002-10 years of the effective date of the 2015 readoption of these rules*** and every ***310*** years thereafter to ensure that the program is providing expected performance in regards to emissions monitoring and allowance use.
- (b) Such audits shall include, as appropriate:
 - (1) Confirmation of emissions reporting accuracy through validation of CEMS and data acquisition systems at the budget source; and
 - (2) Review of allowance transfer and use by the budget source, geographically and temporally.
- (c) Each periodic audit shall examine the extent to which banked allowances have, or have not, contributed to emissions in excess of the budget for each year preceding the audit.
- (d) The periodic audit shall further provide an assessment of whether or not the program is consistent with the requirements for reasonable further progress and the attainment demonstration.

Env-A 3218.03 Audit Results. Should an audit result in recommendations for program revisions, the division shall: ~~(a) Consider, in consultation with the OTC, the audit recommendations; and (b) Propose the appropriate program revisions~~ ***either as changes to current procedures or modifications*** ~~to this regulation~~ ***amendments to these rules.***

APPENDIX A: STATE STATUTES IMPLEMENTED

Rule Section(s)	State Statutes Implemented
Env-A 3201 through Env-A 3205	RSA 125-J:2-a
Env-A 3206	RSA 125-J:2-a & 4-a
Env-A 3207	RSA 125-J:2-a & 4-b
Env-A 3208 & Env-A 3209	RSA 125-J:2-a & 4-a
Env-A 3210	RSA 125-J:2-a
Env-A 3211	RSA 125-J:2-a & 4-a
Env-A 3212	RSA 125-J:2-a, 4-a, & 7
Env-A 3213 through Env-A 3216	RSA 125-J:2-a & 4-a
Env-A 3217	RSA 125-J:2-a, 4-a, & 8, I
Env-A 3218	RSA 125-J:2-a

APPENDIX B: STATUTORY DEFINITIONS

RSA 125-J:1:

XIX-a. “NOx budget allowance” means the limited authorization to emit one ton of NOx during a specified control period. All NOx budget allowances shall be allocated, transferred, or used as whole NOx budget allowances. To determine the number of whole allowances, the number of NOx budget allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

XIX-b. “NOx budget source” means a fossil fuel fired boiler or indirect heat exchanger with a maximum rated heat input capacity of 250 MMBtu/Hour, or more; and all electric generating facilities with a rated output of 15 MW, or more. Any person who applies to opt into the NOx budget program shall be considered a NOx budget source upon acceptance of the application for opt-in.